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# Building an Internal Security Community: The Democratic Peace and the Politics of Extradition in Western Europe\*

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This article extends democratic peace research, which has predominantly focused on the absence of war, to the field of internal security cooperation. It argues that the mechanisms suggested by democratic peace research (responsiveness of democratic leaders to public demands, democratic norms and culture, and institutional constraints) can also be applied to the field of internal security cooperation: democratic leaders can be expected to respond to citizens' demands for enhanced internal security and to strive towards international cooperation in internal security. Moreover, democracies tend to form security communities and to define their security in common terms, which also encourages mutual assistance on issues of internal security. At the same time, however, democratic leaders' ability to engage in international cooperation is circumscribed by domestic institutions that safeguard individual rights. In sum, the mechanisms suggested by democratic peace research can capture both the incentives and difficulties of international cooperation on internal security among democratic states. The case of extradition politics, which impacts both on the internal security of states and on standards of individual rights (such as fair trial), serves to illustrate this point: since there is no general obligation for states to extradite fugitives, extradition has traditionally been based on a series of bilateral treaties. Starting in the 1950s, the members of the Council of Europe, all of which are liberal democracies, have negotiated multilateral conventions designed to facilitate extradition among them. The high level of interdependence and trust among the members of the European Union has led to more far-reaching agreements, culminating in a European arrest warrant, which effectively overcomes remaining barriers to extradition. In congruence to the democratic peace perspective, requests from non-democratic states to become part of that regime have been turned down.

## Introduction

Research on the so-called Democratic Peace has, by and large, focused on the proposition

that democracies do not wage war against each other. In concentrating on this undoubtedly important aspect of state behavior, democratic peace research has lost sight of the larger picture of the complex relationship between democracy (or regime type more broadly) and security policy.<sup>1</sup> This

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<sup>1</sup> 'Security' has been one of the most contested concepts in international relations (for a good overview, see Buzan, Wæver & de Wilde, 1998: 1–8; Müller, 2002b: 369). Though scholars concur that the concept of security refers to the absence of existential threats, they disagree on two issues. First, the state has been challenged as the sole subject of security. Instead, individuals, social groups, and

is unfortunate for two reasons: first, the study of further aspects of the relationship between democracy and security policy yields additional data that may help to specify the mechanisms at work when democratic states cooperate on security issues. Second, the analysis of further aspects of democracies' security policies may benefit from being incorporated into the larger research program on the democratic peace because an established and well-specified set of hypotheses linking regime type and state action is already available.

This article aims to analyze cooperation among Western European liberal democracies on issues of internal security<sup>2</sup> from the perspective of the democratic peace. It outlines how democracy and peace have been connected in democratic peace research, and argues that these mechanisms also apply to other instances of state behavior. Then, it further specifies a democratic peace perspective on issues of internal security cooperation, in particular. The politics of extradition among Western European liberal democracies serves as an illustration. Finally,

mankind have been suggested as equally appropriate subjects. Second, there has been disagreement on what constitutes an 'existential' threat, particularly whether it is sufficient to focus on physical security or whether economic, environmental, or social security must be taken into account as well. For the purpose of an extension of democratic peace research to internal security, as proposed here, no extension to the economic, environmental, or societal dimensions of security is required. It will be necessary, however, to include individuals as subjects of security.

<sup>2</sup> Whereas 'external security' refers to threats originating from outside a state's territory, usually from another state or alliance of states, 'internal security' refers to threats originating from within a state or society, for example from terrorist or criminal organizations (Lutz, 1998: 670). Because a threat to internal security originates in the very society that is to be protected, the strategies for the maintenance of internal security differ from those deemed necessary for external security. As a consequence, almost all states have charged separate institutions with the provision of external and internal security respectively. Whereas the military is held responsible for defending a state's territory against an *outside* attack, the police and law enforcement agencies are in charge of preventing the emergence of threats from within a state. However, as borders have become increasingly open, the distinction between external and internal security has been increasingly blurred.

the benefits of bringing together democratic peace research and the analysis of internal security cooperation are summed up.

## **Mechanisms of the Democratic Peace**

In developing an explanation for the absence of war among democracies, democratic peace research has suggested a set of interconnected mechanisms<sup>3</sup> that can be expected to apply to democratic states' security policies more broadly.

Most prominent is the mechanism, already suggested by Immanuel Kant, that a democratic system of rule makes leaders especially responsive to the preferences of the people. Because citizens are assumed to prefer not to risk their lives in battlefield, leaders of democratic states 'typically experience high political costs from fighting wars – always from losing them, and often despite winning them' (Russett & Oneal, 2001: 54). Critics have objected that leaders may shift the costs of war to a minority in society and thus circumvent the pacifist preferences of the public. A democracy, however, ensures a high degree of responsiveness even if leaders are assumed to be only interested in meeting the minimum requirement for staying in office, that is, the support of the winning coalition: in autocracies, winning coalitions may be small. As a result, it may be possible for leaders to ensure their support by distributing private benefits instead of public goods. However, as a winning coalition increases, 'each member's share of private goods decreases. This makes public policy benefits loom larger in the overall utility assessment of

<sup>3</sup> Among democratic peace researchers, the respective validity of different mechanisms has been the subject of considerable dispute. This debate has focused on the respective merits of 'institutional constraints' and 'democratic norms'. However, though these mechanisms are distinct, they need not be treated as mutually exclusive. In contrast, both mechanisms are 'really complementary: culture influences the creation and evolution of political institutions, and institutions shape culture' (Russett & Oneal, 2001: 53).

members of the winning coalition' (Bueno de Mesquita et al., 1999: 794). Because winning coalitions in modern democracies with universal suffrage comprise at least a majority of the citizens, leaders in democracies have to invest in the provision of public goods in order to become re-elected. Such public goods include foreign policies that result in the promotion of a state's religious or cultural beliefs, or the enhancement of national security (Bueno de Mesquita et al., 2003).

Another mechanism emphasizes the importance of democratic norms and culture (Doyle, 1986; Russett, 1993: 35ff.). According to the 'democratic norms' argument, respect for individual freedom, self-determination, and human rights, as well as norms of peaceful conflict regulation, have been embedded in a democracy's political culture and institutionalized in its political system. Because these norms have become part of their identity, democracies can be expected 'to externalize their internal decisionmaking norms and rules in their foreign policy behavior' (Risse-Kappen, 1995: 500). However, such pacifist intentions are by themselves not sufficient to overcome the security dilemma that results from mutual distrust rather than from aggressive intentions. Moreover, pacifist intentions cannot explain the large number of wars that democracies have waged against non-democracies, including weaker ones that had not attacked them. In order to account for the democratic peace, proponents of the 'democratic norms' argument have therefore turned to the particular collective identity that emerges among states with democratic norms and culture. Democratic peace research has built on the notion that states with similar norms and cultures (be those democratic, socialist, or 'Asian') may build collective identities that help to mitigate distributional conflicts and to overcome mistrust (Wendt, 1999: 353ff.). However, democratic peace research has emphasized that democratic states, in particular, form collective identities that

effectively eliminate war between them. First of all, the respect for individual freedom and self-determination that is part of a democracy's identity leads to respect for 'the rights of others to self-determination if those others are also perceived as self-governing', that is, fellow democracies (Russett, 1993: 31; see also Owen, 1994). Moreover, 'free speech and the effective communication of accurate conceptions of the political life of foreign peoples is essential to establish and preserve the understanding on which the guarantee of respect depends' (Doyle, 1983: 230). Finally, democratic leaders can validate their peaceful intentions 'by pointing to the peaceful resolution of conflicts inherent in their domestic structures' (Risse-Kappen, 1995: 503). Taken together, states with democratic norms and culture may form a *collective identity* that prevents the violent escalation of disputes between them. What is more, the 'presumption of amity' from which fellow democracies benefit (Doyle, 1986: 1161) may even entail 'a concern for the welfare of others who fall within the community' and a definition of 'national security interests in compatible and/or collective ways' (Kahl, 1999: 125f.).

Finally, the so-called 'institutional constraints' argument picks up the notion already voiced by Machiavelli and Tocqueville, that a democratic government's foreign policy will be severely circumscribed by a system of checks and balances (Gaubatz, 1996: 113ff.). Democratic peace research has emphasized that this 'division of power . . . will slow down decisions to use large-scale violence and reduce the likelihood that such decisions will be made' (Russett, 1993: 40).<sup>4</sup> At the same time, however, the large number

<sup>4</sup> To be sure, democratic states differ in the extent to which they constrain the executive. In majoritarian democracies, such as Westminster parliamentary and semi-presidential systems, the executive sets policy and the legislative usually does not block executive decisions. By contrast, in presidential systems like the USA, the executive is heavily constrained by a powerful legislative (Elman, 2000: 93; see also Auerswald, 1999). These differences among democracies might blur the line between democratic and non-democratic systems of rule.

of veto players in democratic systems such as parliaments and courts does not seem to constrain governments from making international commitments in general. Empirical studies found that, on the contrary, democracies are more likely than others to join international organizations in the first place (Russett, Oneal & Davis, 1998: 462). From an institutionalist point of view, the proneness of democracies to cooperate is explained by their particular capability to make *credible* commitments. According to Gaubatz, 'the same actors that make it difficult for democratic states to enter into commitments also make it harder to get out of them' (Gaubatz, 1996: 121; see also Martin, 2000). Thus, the 'institutional constraints' argument does not necessarily apply to making international commitments in general. Though the conditions under which government policy will be constrained most effectively have yet to be examined more thoroughly, it seems clear that, in democracies, checks and balances are especially effective whenever government policy is seen to undermine the democratic system of rule itself or to endanger existing standards of individual rights.

These mechanisms, identified by democratic peace research, have not only been studied with regard to the democratic peace proper but have been analyzed with regard to an increasingly broad range of security policies. By treating the absence of war among democracies as only *one* effect of these mechanisms that characterize the behavior of democracies, scholars have broadened the research agenda of the democratic peace and have traced further aspects of state behavior (and security policy in particular) back to a state's system of rule as well.<sup>5</sup> For example, studies found that so-

called Militarized Interstate Disputes (MIDs)<sup>6</sup> are significantly less likely to occur in democratic dyads than in non-democratic or mixed dyads (Maoz & Russett, 1993; Bremer, 1993: 241). Insofar as MIDs do occur, they are significantly more likely to be resolved by compromise and third-party mediation in democratic dyads than in other dyads (Dixon, 1994; Mousseau, 1998: 226f.). Moreover, democracies experience less domestic violence, including 'democide' and civil wars (Rummel, 1995).<sup>7</sup> In addition, the impact of regime type has been examined even beyond the realm of security policy. For example, research has been carried out on the relationship between regime type and interdependence. Though the evidence is not entirely conclusive, a large number of studies found that democracies trade more among themselves than other pairs of states (Russett & Oneal, 2001: 218ff.), thereby allowing for a higher level of mutual dependence. Therefore, democracies are especially likely to form a 'security community', characterized by 'dependable expectations of "peaceful change" among its population' (Deutsch et al., 1957: 5; see also Adler & Barnett, 1998).

As the previous paragraphs have demonstrated, research on the democratic peace is by no means exhausted by studying the absence of war among democracies. In contrast, a broad range of policies has been traced back to a state's system of rule, with

the research program, one may regard the democratic peace as a part of a (scientific) liberal research program (Moravcsik, 1997, 2003). Here, 'liberalism' refers to studies that chose a 'bottom-up' approach to international politics (Moravcsik, 1997), according to which a state's institutions and a society's preferences have a more profound impact on international politics than various states of the international system such as 'anarchy' or 'bipolarity'.

<sup>6</sup> MIDs are conflicts short of war, including the display and threat of force (Gochman & Maoz, 1984).

<sup>7</sup> Doyle (1996: 365f.) suggested adding 'defense policies – which way do the weapons point and why? Intelligence cooperation – do liberals resist better the temptation to engage in covert activity. . . Foreign aid – is there a "democratic difference" discriminating, other things equal, in favor of democracies?.'

<sup>5</sup> Such suggestions are often linked to a Lakatosian view of science, according to which research programs (such as 'neorealism' or 'liberalism') should specify a set of core assumptions and cover an extensive range of phenomena by specifying auxiliary hypotheses (cf. Doyle, 1996: 365f.). To the extent that non-security issues are incorporated into



the help of the same set of mechanisms. Treating additional instances of state behavior as further observable implications has improved our understanding of the mechanisms at work. For example, the fact that MIDs do occur at all among democracies has been considered to emphasize the importance of structural as opposed to normative constraints, because according to democratic norms even the threat of force is illegitimate, whereas the checks and balances in democracies become the more constraining the more conflicts escalate (Russett, 1993: 90; Hellmann & Herborth, 2001: 7).

However, the analysis of a broad range of state policies as effects of the same mechanisms does not necessarily lead to a virtuous circle of mutually supportive peaceful policies as pictured, for example, by Russett & Oneal (2001). Instead, mechanisms may interact in ways in which either one mechanism counteracts the other or in which both of them may produce results jointly that none of them could have achieved alone (Müller, 2002a: 56). For example, democracies have a tendency to establish, with fellow democracies, cooperative relations that may include a transfer of decisionmaking competencies to international bodies. At the same time, citizens in a democracy value their political system and therefore may oppose any further transfer of decisionmaking competencies to international institutions because it undermines the ability of the public to participate in the decisionmaking process in the first place (Dembinski & Hasenclever, 2001). From a democratic peace perspective, two mechanisms characteristic of democracies conflict with each other, and lead to what Müller (2002a) has termed an 'antinomy of the Democratic Peace'.

## Democratic Peace and the Politics of Internal Security

Though the democratic peace has inspired research on an ever broader range of issues, cooperation on issues of internal security, by contrast, has still received only little attention. An obvious reason is that internal security has traditionally not been an issue of international politics. However, increasing interdependence – which may be treated as an effect of democracy in the first place (see above) – has put issues of internal security on the agenda of international politics, especially within the European Union, where interdependence has reached an unprecedented level. Based on the mechanisms outlined above, I will now outline a democratic peace perspective on internal security cooperation among democracies.

According to the 'responsiveness' argument, democratic leaders are expected to provide public goods, including national security, in order to improve their chances of staying in office (Bueno de Mesquita et al., 2003). Especially in the post-Cold War era, the improvement of internal security is likely to play an increasingly important role in democratic leaders' efforts to ensure re-election. Moreover, especially for leaders in the highly interdependent Western European democracies, international cooperation is likely to become an increasingly important means for doing so. Public opinion surveys support the view that citizens in EU member-states expect efficient international cooperation on (internal) security. According to surveys conducted by Eurobarometer, citizens regard 'fighting terrorism' and 'fighting organised crime and drug trafficking' as a priority for the European Union.<sup>8</sup>

<sup>8</sup> According to the five most recent issues of Eurobarometer (which present field work from May 2001 to April 2003), 'fighting terrorism', 'fighting organised crime', and 'maintaining peace and security in Europe' have been regarded as priorities of EU action (for detailed figures, see the Eurobarometer homepage at [http://europa.eu.int/comm/public\\_opinion/](http://europa.eu.int/comm/public_opinion/)).

With regard to internal security in particular, more than two-thirds of the EU population favor EU-level decisionmaking in fighting organized crime.<sup>9</sup> At the same time, however, a large majority favors keeping the competencies for police and justice at the national level.<sup>10</sup> Apparently, the public hesitates to transfer competencies to authorize force and to safeguard human and citizen rights to an international level, while at the same time endorsing efforts to enhance internal security.<sup>11</sup> Because democratic peace research leads us to expect that democratic leaders respond to public demand, we should expect them to make efforts to combat international crime, while keeping as many competences as possible in the areas of police and justice at the national level. Given that effective international cooperation requires some transfer of decisionmaking competencies, it is difficult to meet public demands for internal security.

This dilemma, resulting from contradictory popular demands, is further exacerbated if the other two mechanisms are taken into account. On the one hand, the 'political culture' argument underlines the capacity or even expectation that democratic leaders cooperate internationally on issues of internal security. As outlined above, democratic peace research expects security politics among democracies to be characterized by

compatible or collective definitions of national security interests (Kahl, 1999: 95, 125). There is nothing in this proposition that suggests an inherent limit to issues of external security. Thus, a democratic peace perspective leads us to expect that democracies will incorporate their fellow democracies' demand for internal security into their own definition of (internal) security. Furthermore, given that international institutions are an important means to resolve conflict peacefully (Hasenclever, 2002) and that democracies are particularly inclined to establish and maintain international institutions, the democratic peace perspective leads us to expect that democracies will establish institutions designed to further the internal security of their members. Moreover, as Burley (1992: 1922) has pointed out, 'liberal states relate to other liberal states differently than they do to nonliberal states in their legal . . . relations'. Liberal states form a 'zone of law' based on the principles of mutual respect and mutual application of each other's domestic law (1992: 1910, 1923).

On the other hand, the 'institutional constraints' argument underlines the difficulties of democratic leaders in cooperating effectively in internal security. As outlined above, institutional constraints have been regarded as limiting the capacity of bellicose leaders to escalate international crises. With regard to internal security, similar institutional constraints may limit a democratic leader's capacity to make international commitments that endanger individual rights, for example commitments to prosecute people (nationals or foreigners) or to assist other states in doing so by making available personal data, for example as part of intelligence cooperation, by letting foreign police operate on one's territory (e.g. in 'hot pursuit'), or by extraditing alleged criminals (see below). Whenever standards of individual rights are in danger of being lowered or circumvented, courts and other

<sup>9</sup> The exact wording of the question is: 'For each of the following areas, do you think that decisions should be made by the (Nationality) government, or made jointly within the European Union? The fight against organised crime'. In March/April 2003, 72% were in favor of EU level decisionmaking (see [http://europa.eu.int/comm/public\\_opinion/archives/eb/eb59/EB59\\_Rapport\\_Final\\_FR.pdf](http://europa.eu.int/comm/public_opinion/archives/eb/eb59/EB59_Rapport_Final_FR.pdf), p. 95).

<sup>10</sup> In March/April 2003, only 30% (police) and 34% (justice), respectively, favored EU level decisionmaking, whereas 71% (police) and 66% (justice) favored decisions made at the national level (see [http://europa.eu.int/comm/public\\_opinion/archives/eb/eb59/EB59\\_Rapport\\_Final\\_FR.pdf](http://europa.eu.int/comm/public_opinion/archives/eb/eb59/EB59_Rapport_Final_FR.pdf), p. 95).

<sup>11</sup> See also Dalton & Eichenberg (1998: 259ff.), who argue that 'classic interdependence issues' receive the highest support rates, whereas policymaking on individual rights receives the least support.



institutions in charge of maintaining the rule of law can be expected to intervene and to prevent the respective commitments. However, it is important to note that the standards of individual rights vary among democratic states. Consequently, democracies may pursue different internal security policies internationally. What is more, conflicts may even arise among democratic states about appropriate standards of protection of individual rights. From a democratic peace perspective, these differences among democracies may be seen as a reconceptualization of the explanatory variable: whereas parliamentary leverage over government decisions has been regarded as the most important institutional constraint in democratic peace research proper, judicial safeguarding of individual rights emerges as the pivotal institutional constraint in the realm of internal security cooperation.<sup>12</sup>

Taken together, the politics of internal security cooperation among liberal democracies is characterized by what Müller (2002a: 71) has called the 'fear of Brussels' antinomy. On the one hand, democratic leaders are inclined to define their security interests in collective terms and to engage in mutually beneficial international agreements enhancing internal security. Moreover, citizens expect democratic governments to pursue foreign policies designed to enhance internal security. On the other hand, domestic institutions circumscribe democratic leaders' ability to transfer decisionmaking competencies to the international level. Moreover, the public in democracies expects the govern-

ment to 'protect' participatory and judicial standards against being undermined by international institutions. As the example of extradition politics will demonstrate, democratic leaders may decrease the tensions inherent in internal security politics by also transferring participatory and judicial standards to the international level.

### Extradition Politics in Western Europe

I will now illustrate the added value of analyzing internal security cooperation from a democratic peace perspective by taking a closer look at the politics of extradition among Western Europe's liberal democracies. The case of extradition politics is well suited for such a purpose because extradition politics significantly impacts on both the internal security of a state and on a central feature of democratic states, namely, their standard of protection of individual rights. The extradition of criminals (including terrorists) is an important contribution to the internal security of the requesting state because it prevents criminals from evading legal prosecution. At the same time, extradition impacts on the requested person's right to a fair trial or, in case of political offences, asylum.

Before this case study is presented, however, two methodological notes of caution seem appropriate.<sup>13</sup> First, extradition politics in Western Europe will not be compared to extradition politics within other groupings of states that can also be understood as a community of shared values (be that 'socialist' or 'Islamist'). As a consequence, the empirical material presented here does not constitute a 'crucial test' of the democratic peace proposition in the realm of internal security. Whether other groups of

<sup>12</sup> As a consequence of this reconceptualization, conflicts between democracies with different standards of individual rights become more visible. This is an innovative step in democratic peace research, because the traditional focus on the absence of war has downplayed security conflicts among democracies. However, it should be noted that these cleavages among democracies do not replace the more important cleavage between democracies, on the one hand, and non-democracies on the other hand. Otherwise, it would be questionable whether the research presented here still belongs to the democratic peace.

<sup>13</sup> I am indebted to the anonymous reviewers and to Nils Petter Gleditsch for pointing these issues out to me.

'like-minded states' (e.g. 'socialist' or 'Islamist') may have equally effective extradition regimes is simply beyond the scope of this article.<sup>14</sup> Thus, the case study presented here is best understood as an explorative study that may demonstrate the usefulness of bringing democratic peace research and the analysis of internal security cooperation together, and that may encourage further (and preferably comparative) research on that issue.

Second, and related to the first issue, it is hardly possible to discriminate between the impact of 'democracy' and that of other factors such as 'interdependence' on extradition politics in Europe, because only a single case has been examined. In order to buttress the causal claims inherent in democratic peace theory in the realm of internal security politics, a comparative (or even large-n) study that allows for the effective control of potential further factors would be necessary. Thus, the aim of this case study is limited to demonstrating the *plausibility* that the mechanisms suggested by democratic peace research are at play in European extradition politics and to encouraging further studies.

As the following paragraphs will outline in more detail, extradition politics among liberal democracies can be characterized by a 'fear of Brussels' antinomy: On the one hand, effective extradition regimes among democratic states can be expected because of both the 'responsiveness' and the 'political culture' argument: The responsiveness of democratic governments leads to the expectation that democratic states will make efforts to enhance internal security by, among other things, negotiating effective extradition regimes. According to the 'political culture' argument, democracies will tend to define

their internal security in common terms. This leads to the expectation that liberal democracies will cooperate on internal security with each other by granting extradition to other democracies. At the same time, requests from non-democratic states, which suffer from a 'presumption of enmity', will not necessarily be granted. On the other hand, democratic leaders can be expected to face high domestic barriers against making commitments on extradition. From a democratic peace perspective, democratic leaders can be expected to take the public's concerns into account, including public skepticism over lowering standards of individual rights. Additional barriers result from the institutional constraints inherent in democratic systems: parliaments and courts can be expected to be reluctant to endorse any government commitment on extradition if domestic standards of individual rights are endangered. Taken together, democratic leaders are confronted with contradicting expectations, typical of a 'fear of Brussels' antinomy. As will be outlined below, however, the high level of mutual trust as well as newly created safeguards for individual rights in the European Union may help to overcome the barriers against extradition commitments and thus contribute to the creation of an internal security community.

### ***Baseline: Extradition as a Sovereign Right***

Extradition – a practice that can be traced back to medieval and even ancient societies (Haas, 2000: 59) – is considered to be the most important means of international legal assistance in criminal matters. Notwithstanding this long tradition, however, the principle of sovereignty has prevented the emergence of an acknowledged norm of international customary law, according to which states would be required to extradite criminals at the request of other states (Ipsen,

<sup>14</sup> However, expert interviews indicate that no group of states is known to have ever achieved a similarly effective extradition regime. For a brief account of mutual assistance in criminal matters among socialist countries, see Gardocki (1986).

1999: 707). By contrast, the principle of sovereignty has emphasized that states do not share a common legal order, but that each of them has a distinct legal order of its own, which is not necessarily respected by other states. Because another state's legal order is generally perceived as 'alien', there is no reason why a state should contribute to its effectiveness by extraditing persons who have fled its jurisdiction. As a consequence, the decision whether to grant extradition to another state has traditionally been an exclusive right of sovereign states. Even in constitutional states in which governments may not extradite a person if the presiding court has denied its admissibility, governments remain free to refuse extradition where it is admissible.<sup>15</sup> Instead of extraditing, states may grant asylum to the requested person. In practice, however, states have passed a large number of bilateral treaties that are usually guided by the following principles: first, extradition is only granted on the condition that the requesting state will do the same in comparable cases (principle of reciprocity or *do ut des*). Second, a person is extradited only if the offence under consideration is punishable in both the requesting and the requested state (principle of double or dual criminality). This principle highlights the perceived 'alienness' of other states' legal orders, which necessitates a new examination of whether the requested person can be considered a fugitive from justice in the first place.

### *Extradition Among Members of the Council of Europe*

For the Western European democracies, the Council of Europe (CoE) was a natural forum to negotiate effective extradition regimes because a democratic system of rule and the respect of individual rights have been

preconditions for membership.<sup>16</sup> Thus, the Council of Europe has provided an opportunity to enhance internal security among states whose general relationship has been characterized by an 'assumption of amity'.

Indeed, the Council of Europe's Committee on Crime Prevention quickly became a major forum for elaborating a series of multilateral conventions that aim to facilitate extradition among its member-states. The demand for a convention on extradition was first expressed by the deputies of the CoE's Consultative Assembly in 1951. The member-state governments responded to this demand by negotiating the European Convention on Extradition of 1957,<sup>17</sup> which has been the 'mother convention' for all further developments. This convention has established a general obligation for the member-states to extradite 'all persons against whom the responsible authorities of the requesting Party have issued warrants for an offense or who are wanted . . . for the carrying out of a sentence or detention order' (art. 1). In doing so, the convention marks a large step forward towards an internal security community. However, though the general obligation softens the principle of state sovereignty, the principle of double criminality remains in place: Extradition is granted only if the offence is punishable in both the requesting and the requested state by deprivation of liberty for a maximum period of at least one year (art. 2). Moreover, contracting parties retain the right to refuse the extradition of their nationals (art. 6). The

<sup>15</sup> For the United Kingdom, see Stanbrook & Stanbrook (2000: 160).

<sup>16</sup> In the late 1940s and early 1950s, the Council of Europe was probably the only natural forum for cooperation among democracies. With regard to the European Community, a democratic system of rule was a de facto prerequisite of membership, too, but the focus of the EC's activities were on economic integration. Though NATO has become a security community of democratic states (Risse-Kappen, 1996), democracy was, during the first decades of the alliance, no prerequisite for membership, as the cases of Portugal, Greece, and Turkey illustrate.

<sup>17</sup> See <http://conventions.coe.int/Treaty/EN/CadreListe-Traites.htm>. The convention came into force in April 1960.

member-state governments were also eager to keep national safeguards against any violation of individual rights in place. Extradition is not granted if the offence is regarded as a political offence or if the request appears to aim at prosecution on account of race, religion, nationality or political opinion (art. 3). Thus, the convention leaves a member-state's right (or duty) to grant asylum untouched. Moreover, extradition may be refused if the offence is punishable by death (art. 11).

In addition to these qualifications in the convention itself, any party to the convention can add reservations and declarations further limiting the scope of the general obligation to extradition.<sup>18</sup> Thus, in sum, the European Convention is best regarded as an important basis for legal cooperation that may be intensified by further treaties (bilateral as well as multilateral) but that, by itself, does not necessarily significantly change the practice of extradition. Indeed, member-states have still experienced difficulties in having persons extradited by the requested parties. For example, France refused to extradite members of the Basque terrorist group ETA to Spain and members of the 'Red Army Faction' to Germany (Busch, 1995: 290).

As expected from a democratic peace perspective, Western European democracies considered these standards of the extradition mother convention increasingly inappropriate. In particular, Western European democracies considered the 'political exemption clause', according to which political offences were exempted from the obligation to extradite, inappropriate. Because the Western European democracies have formed a community of values, they also consider each other sufficiently trustworthy to expect no misuse of political extradition claims.

<sup>18</sup> For example, some states, including the Netherlands and Hungary, have declared that they retain the right to refuse extradition for humanitarian reasons.

Thus, in 1975, an additional protocol was signed which excluded war crimes and crimes against humanity from the category of non-extraditable political offenses. More importantly, in 1977, the members of the Council of Europe (CoE) signed the European Convention on the Suppression of Terrorism, which is designed to facilitate the extradition of persons who have committed terrorist crimes. Since terrorism is inherently difficult to define (and negotiations on a definition were considered to be too time-consuming), the member-states chose to list a series of offences that shall be exempted from the 'political exemption clause', including the unlawful seizure of an aircraft, offences involving an attack against the life of internationally protected persons, and offences involving the taking of hostages.

In congruence with a democratic peace perspective, the facilitation of extradition was accompanied by safeguards to ensure that the provision of internal security would not come about at the expense of human and civil rights. Thus, art. 14 stipulates that the terrorism convention can be denounced with immediate effect, which is an unusual clause in an international treaty. This provision is designed to ensure that no obligation to extradite arises if a CoE member can no longer be considered democratic (as Greece in 1967) but has not yet been excluded from the CoE (Bartsch, 1977: 1987).

### *Enhanced Cooperation Within the European Union: Towards a European Arrest Warrant*

Among the CoE states, the members of the European Union have formed an inner circle.<sup>19</sup> By establishing a single market and

<sup>19</sup> Immediately after World War II, Western European democracies agreed on the desirability of integration but disagreed on its institutional form. Whereas the United Kingdom and the Scandinavian countries favored an inter-governmental model, France, Germany, Italy, and the Benelux countries aimed for a more ambitious, supranational institutional order. On the basis of the lowest

a single currency, economic interdependence among EU states has reached an exceptionally high level. This high level of interdependence has brought about manifold incentives for cooperation, in order to counter the negative externalities of interdependence. Indeed, interdependence has been accompanied by a range of common policies and strong supranational institutions. What is more, economic interdependence and cooperation have 'spilled over' into related issue-areas, including internal security. Here, the high level of economic interdependence has contributed to the reduction and even abolition of border controls, which in turn has created a 'common criminal space', that is, an area in which the combat and prosecution of crime is increasingly difficult without transborder cooperation in criminal matters.

Thus, theories of interdependence, such as regime theory (Hasenclever, Mayer & Rittberger, 1997) and neofunctionalist integration theory (cf. Haas, 1958), may lead us to expect closer cooperation on criminal matters among EU member-states. What the democratic peace perspective adds to this picture are the mechanisms that have characterized the process of building an internal security community.<sup>20</sup>

Though there had been some cooperation on issues of internal security since the 1970s,<sup>21</sup> it was only in the early 1990s that the Maastricht Treaty introduced 'Justice and

Home Affairs' as a distinct 'pillar' of the European Union.<sup>22</sup> Within this framework, the member-states negotiated a convention relating to extradition between the member-states of the EU that was signed in September 1996.<sup>23</sup> In congruence with a democratic peace perspective, the member-states expressed 'their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial' (preamble).<sup>24</sup> On the basis of such a high level of mutual trust, offenses may, in principle, no longer be regarded as political offenses (art. 5). Moreover, extradition obligations generally also apply to nationals (art. 7).<sup>25</sup> However, since the agreement was negotiated in an intergovernmental framework outside the European Community, the convention had to be ratified by each member-state. As expected from an 'institutional constraints' perspective, those domestic institutions whose competencies were to be diminished (e.g. the Conseil d'État in France) opposed and delayed ratification.<sup>26</sup> As a consequence, democratic leaders began looking for new ways to

common denominator, the Council of Europe was established along intergovernmental lines. Those aiming for a more ambitious supranational integration founded the European Coal and Steel Community (ECSC) in 1951 and the European Economic Community in 1958.

<sup>20</sup> Moreover, adherents to a democratic peace perspective may point out that democracies are particularly prone to allowing for high levels of interdependence (Russett & Oneal, 2001: 218ff.), which in turn contributes to mutual trust.

<sup>21</sup> Cooperation took place in the so-called TREVI group (Terrorisme, Radicalisme, Extrémisme et Violence International) that was part of European Political Cooperation. However, since TREVI lacked any legal basis, no effective policies could be agreed on.

<sup>22</sup> Since 1985, the Schengen agreements had already provided a framework in which an increasing number of EU member-states cooperated in internal security politics. However, the Schengen agreements have focused on police cooperation and added little to the practice of extradition in Western Europe.

<sup>23</sup> 'Convention Drawn up on the Basis of Article K.3 (now Article 31) of the Treaty on European Union Relating to Extradition between the Member States of the European Union' (OJ C 313, 23.10.1996, p. 11).

<sup>24</sup> It is worth noting that the European Parliament's report on the matter states that 'the system of extradition seems to have less and less justification and *raison d'être* within a Union of States governed by the rule of law and equally respectful of human rights'. Moreover, the European Parliament expressed its disappointment that member-states retain the possibility of entering reservations (A4-0265/97).

<sup>25</sup> Both provisions have had a limited effect, however, because some member-states have made use of the possibility to make a declaration that these provisions do not apply to them.

<sup>26</sup> At the end of 2001, Italy, Ireland, and France had still not ratified the convention (see <http://ue.eu.int/accords/default.asp?lang=en>).



overcome the inefficiencies of the existing extradition regime.

Spain, which has had a special interest in having members of the terrorist group ETA extradited to Spanish courts, took a leadership role in establishing the mutual recognition of court judgements as a new principle in European extradition law.<sup>27</sup> According to that principle, states consider each other's legal and judicial systems trustworthy enough to recognize any request for extradition without the many reservations that have remained part of European extradition law. The principle of mutual recognition implies the abolition of the principle of double criminality: a person must be extradited even if the offense under consideration is not punishable in the requested state. Thus, the principle of mutual recognition serves to enhance security in areas that pose a particular problem in some, though not all, member-states, for example membership in terrorist organizations for which some member-states do not have respective legislation.<sup>28</sup> Experts have regarded the principle of mutual recognition to be a 'revolution in extradition law' (Vogel, 2001: 937f.).

In the late 1990s, Spain had been engaged in negotiating a series of bilateral treaties with Italy, France, the United Kingdom, and Belgium that were based on the principle of mutual recognition. At the same time, the Spanish government has successfully worked on establishing this principle at the EU level: at the special European Council in Tampere (15–16 October 1999) that the Commission and the Spanish government had suggested, the member-states endorsed the principle of mutual recognition as a basis for future

judicial cooperation.<sup>29</sup> This new principle was first applied to extradition.

The European Commission's 'proposal for a European arrest warrant'<sup>30</sup> that the Tampere European Council had asked for and that has been based on the principle of mutual recognition was tabled in September 2001. Because of the terrorist attacks on New York and Washington that coincidentally occurred only days before the proposal was made,<sup>31</sup> the proposal received priority treatment from politicians and much attention from the media and the public.<sup>32</sup> Agreement was reached within an extraordinarily short period of merely three months. The most important feature of the European arrest warrant is that the requirement of dual criminality, which had been the most prominent impediment to extradition, is replaced with the principle of mutual recognition of court judgements among EU member-states. This has become possible on the basis of 'a high level of confidence between Member States' to which the EU states refer in the preamble.<sup>33</sup> Moreover, extradition is facilitated by abolishing the political phase inherent in any extradition procedure and by allowing for direct communication between the issuing and the

<sup>29</sup> Tampere European Council, 15–16 October 1999, Presidency Conclusions, especially No. 33 (Bulletin EU 10-1999).

<sup>30</sup> European Commission, Proposal for a Council framework decision on the European arrest warrant and the surrender procedures between the member-states. COM (2001) 522 final/2, 25/9/2001 (OJ C 332 E, 27.11.2001, 305–319).

<sup>31</sup> It is worth noting that the events of 11 September 2001 did not initiate the proposal: work on the proposal had started in the summer of 2000.

<sup>32</sup> The member-states, meeting at an extraordinary European Council on 21 September, signify their 'agreement to the introduction of a European arrest warrant' because 'extradition procedures do not at present reflect the level of integration and confidence between Member States of the European Union' (Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001).

<sup>33</sup> OJ L 190, 18.7.2002, 1–20, here: p. 2.

<sup>27</sup> This principle was already practised among the Nordic countries – Norway, Sweden, Finland, Denmark, and Iceland.

<sup>28</sup> However, some member-states were eager to ensure that no person would have to be extradited for an offense that had deliberately been exempted from prosecution (e.g. abortion).



executing judicial authorities.<sup>34</sup> This may be considered a change from international to transnational law that is also reflected in the wording of the arrest warrant: the criminals under consideration are no longer to be 'extradited' but to be 'surrendered'.

In effect, the terrorist attacks of 11 September 2001 and the ensuing public demand for enhanced internal security had created a window of opportunity to overcome the institutional constraints against far-reaching extradition commitments that had been in place in many EU member-states. Still, the intensification of international cooperation on criminal prosecution and the abolition of principles designed for the protection of nationals, etc. did not pass without concerns being voiced about human and civil rights, among others by nongovernmental organizations including 'Justice' and 'Statewatch'.<sup>35</sup> Several human and civil rights groups such as Amnesty International had also been consulted by the Commission before the proposal was worded. During the decision-making process at the EU level, the European Parliament, which had no veto power but had to be consulted, became the voice of all those who had been concerned about a lowering of human or civil rights standards.<sup>36</sup> The European Parliament failed in inserting additional references to existing human and civil rights obligations of the member-states, particularly under the 'European Convention for the Protection of

Human Rights and Fundamental Freedoms', the EU Charter of Fundamental Rights, and the '1951 Convention Relating to the Status of Refugees'. However, concerns about human and civil rights have been met by the Council. The final text states that implementation of the arrest warrant may be suspended in the event of a severe breach of the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law by a member-state. Moreover, the European Parliament succeeded in obtaining the assurance from the Council that steps will be taken to improve the standards of justice and the access to justice in the member-states. The Commission was charged with preparing a Green Book on standards to be applied in criminal proceedings, in order to properly protect citizens throughout the European Union.

The democratic peace perspective is also helpful in understanding the European Union's treatment of requests from non-member-states to become a party to these agreements. Such requests have been received from a number of countries that regard closer international cooperation in criminal matters to be in their interest. As to be expected from a democratic peace point of view, such requests were denied in cases in which the requesting states' legal and judicial systems are not considered sufficiently trustworthy. Thus, requests by Russia and Turkey were denied by the European Union. In contrast, negotiations on accession to the European arrest warrant are to be undertaken with Norway and Iceland, that is, two states whose democratic character is beyond doubt. This policy towards third states also highlights that a high level of interdependence in criminal matters (as in EU-Russian and EU-Turkish relations) is no sufficient condition for more effective internal security cooperation.

Finally, negotiations between the USA and the EU member-states illustrate that internal

<sup>34</sup> As regards government intervention, the European arrest warrant basically formalizes a common practice because government intervention had already become very unusual among Western European democracies. Direct communication among competent authorities was already established among the parties to the Schengen Agreement of 1990.

<sup>35</sup> Concerns about the future of the rule of law have also been voiced in national parliaments on the occasion of ratification, for example in the Swedish Riksdagen, where conservative and liberals joined the left and the greens in opposing the proposal (Euobserver, 24 May 2002).

<sup>36</sup> See the reports by Graham Watson, MEP on behalf of the European Parliament (A5-0397/2001 of 14 November 2001 and A5-0003/2002 of 9 January 2002).

security cooperation may also fail between democratic states. Capital punishment and the establishment of military courts after 11 September 2001 have been considered within the EU to constitute insurmountable obstacles to extradition. Though an extradition agreement between the EU and the USA has been signed in June 2003, the USA has not been granted the same privileged status as EU member-states. These tensions within the transatlantic community highlight that the standard of protection of individual rights may become more influential in shaping internal security cooperation than democratic institutions proper.

The arrest warrant marks the climax of a development characterized by a growing willingness of Western European democracies to improve their internal security by extraditing (or surrendering) fugitives from justice. At the beginning of this development, extradition politics was imbued with the principle of sovereignty and a concomitant high level of skepticism towards any other state's legal order and judicial system. Driven by their publics' demand for increased internal security and on the basis of growing levels of mutual trust, Western European democracies have, step by step, acknowledged that their legal orders are based on a *common* set of values that allows for a facilitation of extradition. Most importantly, the principle of double criminality, which used to reflect the skepticism towards any other state's legal order, has been replaced by the principle of mutual recognition, which emphasizes that there is a common 'zone of law' even though differences in criminal justice remain. By the same token, political offenses are no longer exempted from extradition, because the Western European democracies consider an attack against the political order of any of their members as an attack against their common democratic values. Finally, political actors who used to grant or refuse extradition

have been, by and large, replaced by judicial actors who cooperate on a common basis of supranational law. Common membership in international institutions, particularly in the Council of Europe and the European Union, has contributed to this development in two ways: first, cooperation in the European Union has led to a high level of interdependence, which has in turn increased the demand for a more effective extradition regime. Second, both the Council of Europe and the European Union have not only expressed common values of democracy and individual rights but have also effectively linked membership to compliance with them. The possibility to suspend the membership of states because of their violation of individual rights can be regarded as a precondition for both the Council of Europe's convention on extradition and the European Union's arrest warrant.

## Conclusion

This article has extended research on the democratic peace to the analysis of internal security cooperation in order to serve a double purpose. First, the study of internal security cooperation yields additional data that may help to specify the mechanisms at work when democratic states cooperate on security issues. Second, the incorporation of internal security into the larger research program on the democratic peace helps to highlight characteristic features of international cooperation on internal security. I will conclude with examining each contribution in turn.

As the development of extradition politics among the Western European democracies illustrates, liberal democracies not only refrain from waging war against each other but also pursue active policies to contribute to each other's security. This finding can be added to a long list of further observable implications of the original democratic peace

thesis, affirming the importance of regime type to state behavior and international politics. At the same time, however, conflicts between the USA and the EU have highlighted the importance of differences among democracies. Though both are liberal democracies that attribute great importance to the protection of individual rights, the EU member-states, on the one hand, and the USA, on the other hand, subscribe to *different sets* of individual rights (e.g. as regards capital punishment), which severely inhibits effective cooperation between them. These differences have, of course, not been reflected in most of the democratic peace research that has focused on issues of external security. The more the focus is shifted towards issues of internal security (or the more the line between internal and external security is blurred), the more important different sets of individual rights are likely to become for the analysis of security politics – the dispute over the establishment of the International Criminal Court is just another case in point. Though the difference between democracies and non-democracies may still carry the better part of the explanatory burden in security politics, differences between various types of democracies may acquire more importance. In this regard, research on internal security cooperation may indicate a possible future development of democratic peace research.

The analysis of extradition politics has contributed to our understanding of the mechanisms linking regime type and security policy. The high level of responsiveness of democratic leaders to public demands has had ambivalent effects on democracies' extradition policies. As survey data have illustrated, democratic leaders are expected to enhance internal security, if necessary by cooperating internationally, and at the same time to keep competencies for justice at the national level. An enhanced awareness of external threats after 11 September 2001 seems to have tipped the

balance towards security considerations. The high level of responsiveness to public demands in democratic states can be regarded as an important source of democracies' proactive policies on internal security after the terrorist attacks on New York and Washington. A shared liberal political culture based on the rule of law and the respect of individual rights has proved to be equally important. The 'zone of law' that exists among the Western European democracies has enabled them to negotiate effective extradition regimes, including a European arrest warrant. The importance of a shared liberal political culture is underlined by the numerous references to the high level of mutual trust that can be found in European Commission proposals, European Parliament resolutions, and European Union law. Finally, the institutional constraints characteristic of democratic states turned out to have an inhibiting effect whenever standards of individual rights were in danger of being undermined by international commitments. Taken together, high responsiveness, political culture, and institutional constraints have not been mutually reinforcing. By contrast, the interplay of the mechanisms are better characterized as an antinomy (Müller, 2002a): democratic leaders have had to cope with contradicting expectations to enhance internal security without undermining national democratic control over individual rights.

The democratic peace perspective has also helped to highlight important features of extradition politics (or internal security cooperation more broadly). To be sure, one can hardly account for the development of extradition politics without reference to growing levels of interdependence. Particularly among the member-states of the EU, the free movement of people and the abolition of border controls have been strong incentives for international cooperation in internal security politics. Thus, interdependence may be regarded as the most important factor in

extradition politics. Notwithstanding the pivotal role of interdependence, however, the democratic peace perspective adds to our understanding of the mechanisms at play. Indeed, it is hardly possible to understand the introduction of the principle of mutual recognition and the arrest warrant (as well as the public's acceptance of these measures) without reference to the high level of mutual trust that has evolved among the Western European democracies. Moreover, only the democratic peace perspective can account for the fact that liberal democracies refuse to negotiate effective extradition agreements with countries with which a large number of requests for extradition exist (e.g. Turkey), whereas other countries with which only little interdependence in criminal matters exists have been a party to very efficient extradition regimes. As pointed out above, however, the single case study of extradition politics in Europe does not allow for any test of the explanatory value of 'democracy' against other possible explanations (e.g. interdependence). As an explorative study, it may demonstrate, however, that a further analysis of internal security cooperation from a democratic peace perspective is warranted and promising. Given that the security agenda after 11 September 2001 will further blur the differences between external and internal security, there will be no shortage of cases to be studied.

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